



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN  
ATTORNEY GENERAL

April 3, 1969

Honorable J. R. Singleton  
Executive Director  
Texas Parks and Wildlife  
Department  
Austin, Texas 78701

Opinion No. M-368

Re: Authority of Parks and  
Wildlife Department to  
price and sell remov-  
able sedimentary  
materials from waters  
of the State of Texas.

Dear Mr. Singleton:

Your request for our opinion, dated March 31, 1969,  
sets out the following question:

"Does the Parks and Wildlife Commis-  
sion have the authority under  
Article 4053d, R.C.S., to estab-  
lish a selling price, in the sense  
of the term commercial value as  
used in Article 4051, R.C.S., on  
the marl, sand or other sedimen-  
tary materials to be removed from  
Galveston Bay and used as fill  
material?"

The Parks and Wildlife Department has received an application from a dredging company for a permit to remove soil deposits from the bottom of Galveston Bay. This material will be placed on shore and used as fill, to build up privately-owned lands on Galveston Island. You have another application for a permit to remove soil deposits from the bottom of Galveston Bay to be placed on shore in a stockpile for sale as land fill to be used on or adjacent to Galveston Island. You have determined that this landfill material consists of marl, sand and shell; that it is in great demand in this area; and that its use as land fill materially increases the value of the land. You have concluded that this material does have a commercial value as that term is used in Article 4051, Vernon's Civil Statutes.

Article 4051 provides:

"All the islands, reefs, bars, lakes, and bays within the tidewater limits from the most interior point seaward co-extensive with the jurisdiction of this State, and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mud-shell or gravel of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds within the jurisdiction and territory herein defined, are included within the provisions of this chapter, and are hereby placed under the management, control and protection of the Commissioner. None of the marl, gravel, shells, mudshells or sand included herein shall be purchased, taken away or disturbed, except as provided herein, nor shall any oyster beds or fish hatcheries within the territory included herein be disturbed except as herein provided. Acts 2nd C.S. 1919 p. 216."  
(Emphasis added.)

In Attorney General Opinion M-84 (June 9, 1967), we advised you that The Parks and Wildlife Department has the authority and duty to manage, control and protect all the marl and sand of commercial value. You have indicated in your request that the soil deposits proposed to be removed and used as shore land fill are classified as marl and sand. The facts you set out do not indicate use of the materials under the provisions of Articles 4054, 4054a or 4054b, Vernon's Civil Statutes. The application should, therefore, be processed under Article 4053, Vernon's Civil Statutes.

Hon. J. R. Singleton, page 3 (M-368)

Article 4053d, Vernon's Civil Statutes, provides, in part:

"The Game, Fish and Oyster Commission (now the Parks and Wildlife Department. Article 978f-3a, Vernon's Penal Code.) by and with the approval of the Governor, may sell the marl, gravel, sand, shell or mudshell included within this Act, upon such terms and conditions as he may deem proper, but for not less than four (4¢) cents per ton, and payment therefor shall be made to said Commissioner...."  
(Emphasis added.)

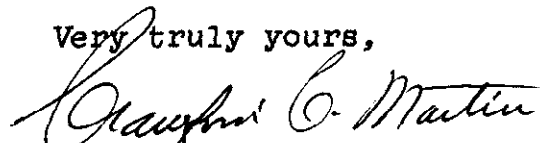
Article 4052, Vernon's Civil Statutes, by virtue of Article 978f-3a, Vernon's Penal Code, vests in the Parks and Wildlife Department broad and full power, and discretion, over all matters pertaining to the sale of these materials.

Within the limits of your question, and the submitted facts we, therefore, answer your question in the affirmative.

#### SUMMARY

The Parks and Wildlife Department has the authority, with consent of the Governor, to establish a selling price, in the sense of the term "commercial value" as used in Article 4051, Vernon's Civil Statutes, on marl, sand or other sedimentary materials to be removed from Galveston Bay and used as fill. This authority is authorized pursuant to Article 4053d, Vernon's Civil Statutes.

Very truly yours,



CRAWFORD C. MARTIN  
Attorney General of Texas

Hon. J. R. Singleton, page 4 (M-368)

Prepared by  
Vince Taylor  
Assistant Attorney General

APPROVED:

OPINION COMMITTEE

Kerns Taylor, Chairman  
George Kelton, Vice-Chairman  
Bill Allen  
James S. Swearingen  
Sally Phillips  
Milton Richardson

W. V. GEPPERT  
Staff Legal Assistant